

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ace Communications NAL/Acct. 415HF0010
Fishers, Indiana

NOTICE OF APPARENT LIABILITY

Adopted: June 22, 1994; Released: June 30, 1994

By the Acting Chief, Enforcement Division, Field Operations Bureau

I. INTRODUCTION

1. This is a Notice of Apparent Liability for monetary forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. Section 503(b), to Ace Communications for the willful violation of Section 302(b) of the Act, 47 U.S.C. Section 302(b), and Section 2.803 of the Commission's Rules, 47 C.F.R. Section 2.803.

2. The appropriate amount of forfeiture for this violation is \$20,000.

II. BACKGROUND

3. Scanning receivers, or "scanners", are radio receivers that can automatically switch between four or more frequencies anywhere within the 30-960 MHz band. In order to control their potential to cause harmful interference to authorized radio communications, the FCC rules require that scanners receive an equipment authorization (certification) from the Commission prior to marketing. 47 C.F.R. Section 15.101. Marketing includes selling, advertising, shipping, importing and distributing.

4. Ace Communications marketed two types of scanner receivers (Yupiteru Model MVT 7100 and Trident Model TR 2400) which did not have an FCC equipment authorization. For the Yupiteru Model MVT 7100 scanner receiver, Ace Communications

- advertised it in these magazines: Amateur Radio Today, September 1993 edition; CQ, September 1993 edition; and Popular Communications, October 1993 edition.

- sold a scanner receiver to an individual on August 4, 1993.

For the Trident Model TR 2400 Ace Communications

- sold a scanner receiver to a company on March 16, 1994, and to an individual on April 25, 1994.

III. DISCUSSION AND CONCLUSION

5. Contrary to the requirements of Section 15.101(a) and 15.121 of the Commission's Rules, 47 C.F.R. Sections 15.101(a), 15.121, Ace Communications willfully marketed two types of scanner receivers which did not have an FCC equipment authorization. The marketing of these scanner receivers constituted two separate violations of Section 2.803 of the rules.

6. For marketing the Yupiteru Model MVT 7100 Scanner receiver, the Commission is assessing a \$7,000 forfeiture. This is the base amount established by the Commission for this type violation.

7. For marketing the Trident Model TR 2400 Scanner receiver, the Commission is assessing a \$13,000 forfeiture. As noted above, the base forfeiture for marketing unauthorized equipment is \$7,000. However, we are making an upward adjustment of the base amount because this violation was repeated. Ace Communications marketed the Trident scanner receiver even after receiving the FCC's September 24, 1993, letter warning that such scanning receivers could not be marketed without first obtaining an FCC equipment authorization. Additionally, the FCC's December 8, 1993, letter warned Ace Communications that the FCC no longer grants equipment authorizations to scanner receivers that tune into the cellular telephone frequencies, and marketing of devices without an FCC equipment authorization is prohibited. Both the Trident scanner receiver and the Yupiteru scanner receiver tune into the cellular telephone frequencies. Scanning Receivers with such capability are not eligible for an equipment authorization pursuant to Section 15.121 of the Rules adopted in the *Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911 (1993).

8. We are also making an upward adjustment of the base amount because the violation was intentional. The Trident Model TR 2400 scanner receivers bear a label with FCC Identifier G70TR2400. This misleads others into believing that the FCC issued an equipment authorization for the scanner receiver. This is not the case. The FCC has not validated the FCC identifier by a grant of an equipment authorization, and the FCC identifier should not be used. Thus Ace Communications' marketing of the scanner receivers with an unvalidated FCC identifier is an intentional violation.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. Section 503(b), and Section 1.80(f) of the Commission's Rules, 47 C.F.R. Section 1.80(f), that Ace Communications IS APPARENTLY LIABLE FOR MONETARY FORFEITURE in the amount of twenty thousand dollars (\$20,000) for marketing unauthorized equipment in violation of Section 302(b) of the Act and Section 2.803 of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Act.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. Section 1.80(f)(3), that Ace Communications shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and

supporting documentation.¹ Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. The NAL/Acct. No. 415HF0010 should be written on the check or other instrument of authorization. Mail the payment to:

Federal Communications Commission
P.O. Box 73482
Chicago, IL 60673-7482

Send written responses within 30 days regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Chief, Legal Branch
Mail Stop 1500E3 attn. 415HF0010
Washington, D.C. 20554

11. IT IS FURTHER ORDERED that the Field Operations Bureau send by certified mail, return receipt requested, one copy of this Order to Ace Communications.

FEDERAL COMMUNICATIONS COMMISSION

Roy E. Kolly
Acting Chief, Enforcement Division
Field Operations Bureau

¹ Claims of inability to pay should be supported by tax returns or other financial statements for the most recent three years.